

VZCZCXRO9669
OO RUEHGA RUEHHA RUEHMT RUEHQU RUEHVC
DE RUEHOT #0079 0302055
ZNR UUUUU ZZH
O 302055Z JAN 09
FM AMEMBASSY OTTAWA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 9031
INFO RUCNCAN/ALL CANADIAN POSTS COLLECTIVE PRIORITY

UNCLAS OTTAWA 000079

SIPDIS

SENSITIVE

E.O. 12958: N/A
TAGS: [PTER](#) [PGOV](#) [PREL](#) [CA](#)
SUBJECT: COURT BOLSTERS PASSPORT DENIAL FOR TERRORISTS

11. (SBU) Summary: A Canadian appeals court has upheld the constitutional authority of the Foreign Minister (in charge also of Canada's passport agency) to refuse to issue a passport to Canadian citizens convicted of terrorist offences. The decision appears to bolster the federal government's ability to withhold travel documents on national security grounds under 2004 amendments to passport regulations. End summary.

TRAVEL FOR TERRORISTS?

12. (U) On January 29, the Federal Court of Appeal ruled unanimously that the government's decision in 2006 to deny Fateh Kamel (an Algerian-Canadian convicted of terrorist offences in France in 2001 -- para 3) a Canadian passport was a justifiable violation of his constitutional right to "enter, remain in and leave Canada." It overturned a March 13, 2008 Federal Court ruling that had struck down as unconstitutional a 2004 amendment to the Canadian Passport Order authorizing the foreign minister to deny or revoke a passport on national security grounds. The lower Court had found the amendment "vague, even nebulous," had given the federal government six months to rewrite the provision to conform to the Charter of Rights and Freedoms, and had granted Kamel a judicial review of his passport application. The Appeal Court's ruling cited a key provision (section one) of the Charter that subjects rights to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

13. (U) In 2001, courts in France had sentenced Fateh Kamel to eight years in prison for his participation in the Armed Islamic Group, a terrorist cell that was responsible for the hijacking of an Air France jet in 1994 as well as a series of bomb attacks in France in 1995, and for supplying fraudulent passports to militants. The group is also linked to "Millennium Bomber" Ahmed Ressam. Kamel was released early for good behavior and returned to Canada in 2005 on a special single-use passport.

CANADIAN PASSPORT RULES

14. (U) Under the Canadian Passport Order, Canada's passport agency may refuse to issue a passport to an applicant who: submits an incomplete application; stands charged in or outside Canada with an indictable offense; is imprisoned in Canada or forbidden to leave the country due to conditions imposed by a court or correctional institution; is imprisoned outside Canada or forbidden to leave a foreign state due to conditions imposed by a foreign court or correctional institution; forges, or knowingly uses, acts on, causes others to use, or possesses a forged passport, or makes false or misleading statements for the purpose of procuring or altering a passport; is indebted to the Crown for expenses for repatriation or for consular aid; already possesses a valid Canadian passport; and/or "if the Minister is of the opinion that such action is necessary for the national security of Canada or another country."

TEST CASES

15. (U) The federal government officially listed national security as a ground for refusing to issue passports to certain individuals on September 22, 2004. Prior to 2004, the government could only restrict passports on non-listed grounds by asking the Governor General to invoke the rarely used "royal prerogative" (a customary authority and privilege vested in the monarch and exercised only on the advice of the Prime Minister). In July 2004, the then-Governor General invoked her prerogative to deny a passport to Canadian-born Abdurahman Khadr, who had admitted to participating in terrorist training in Afghanistan (and who is an elder brother of Guantanamo detainee Omar Khadr). Then-Foreign Minister Bill Graham explained the decision as "in the interest of the national security of Canada and the protection of Canadian troops in Afghanistan." Khadr applied for a passport a second time in 2006, but the government declined the application on security grounds on the basis of the amended Canadian Passport Order. Fateh Kamel applied for a standard passport in December 2005.

16. (SBU) According to a federal spokesperson, the ruling in the Kamel case "strengthens the case, when there's national security issues" that passport revocation or denial is justified, and "we are very happy" with the judgment. However, the same official declined to speculate about the outcome should Kamel reapply for a passport, noting "that's a call for the minister." The ruling did not explicitly clarify the status of applicants -- such as Abdurahman Khadr -- who (unlike Kamel) have never been actually convicted of terrorist offenses but about whom the government may have national security concerns. Kamel has reportedly not yet decided whether to appeal the ruling to the Supreme Court.

BREESE